

**Alert Ambulance, Inc. and Teamsters Local Union
No. 293, a/w International Brotherhood of
Teamsters, AFL-CIO. Case 8-CA-25437**

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on May 4, 1993, the General Counsel of the National Labor Relations Board on June 18, 1993, issued a complaint against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act, by unilaterally failing to continue in effect contractual wages and hospitalization and prescription benefits and to remit checked-off union dues to the Union.

On July 22, 1993, the General Counsel sent the Respondent a certified letter notifying the Respondent of its failure to answer the complaint and setting forth a deadline of July 29, 1993, to do so. On July 28, 1993, the Respondent filed an answer, which stated "agree" in response to each of the factual allegations in paragraphs 1 through 10(c) of the complaint, and "do not understand" in response to the legal conclusions set forth in paragraphs 11 through 13 of the complaint.

On August 13, 1993, the General Counsel filed a Motion for Summary Judgment, and on August 20, 1993, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

The Respondent's admissions to all the factual allegations of the complaint establish that, without the consent of the Union, it has failed since November 4, 1992, to comply with contractual provisions relating to wages, hospitalization and prescription benefits, and the remission of checked-off dues to the Union. The Board has long held that Section 8(a)(5) and (1) of the Act prohibits an employer who is a party to an existing contract, as the Respondent is here, from modifying the terms and conditions established by that agreement without obtaining the Union's consent. *General Split Corp.*, 284 NLRB 418 (1987); *C & S Industries*, 158 NLRB 454, 457 (1966). Accord, *Stevens & Associates Construction Co.*, 307 NLRB 1403 (1992); *Wilson & Sons Heating*, 302 NLRB 802, 806 (1991). Accordingly, the Respondent has admitted all the facts material to the resolution of the unfair labor practice issues raised by the complaint and we therefore grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation with an office and place of business in Cleveland, Ohio, is engaged in the providing of emergency and nonemergency transportation services. In the conduct of its business operations, the Respondent annually provides services valued in excess of \$50,000 for Nationwide Insurance Company, Blue Cross-Blue Shield, and the State of Ohio, enterprises directly engaged in interstate commerce. We find that the Respondent has, at all material times, been an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We further find that the Union, Teamsters Local Union No. 293, a/w International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Unit and the Union's Representative Status

The Respondent has recognized and contracted with the Union since about 1980 as the exclusive collective-bargaining representative of its employees in the following unit, which is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time Ambulance Drivers and Attendants employed by the Employer directly, indirectly, or in any wholly owned or controlled subsidiary company of the Employer, who are engaged in driving or servicing the Employer's motor vehicle equipment, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

The most recent collective-bargaining agreement is effective from March 1, 1992, through February 28, 1995. The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. The Unlawful Conduct

Since on or about November 4, 1992, the Respondent has failed to continue in effect all the terms and conditions of its current collective-bargaining agreement with the Union without obtaining the Union's consent. Specifically, the Respondent has failed since that date to provide bargaining unit employees with hospitalization and prescription benefits, as described in section 23 of the agreement; to pay bargaining unit employees the wages prescribed by section 31 of the agreement; and to remit checked-off union dues to the Union, as authorized by section 5 of the agreement.

CONCLUSIONS OF LAW

By unilaterally failing to continue in effect all of the contractually required wages and benefits contained in the parties' collective-bargaining agreement, and by refusing to remit checked-off union dues to the Union, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive representative of its employees within the meaning of Section 8(d) of the Act, and has thereby violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed to continue in effect the contractually required wages and hospitalization and prescription benefits, we shall order the Respondent to adhere to all the terms of the parties' 1992-1995 collective-bargaining agreement. Specifically, we shall order the Respondent to make the employees whole, with interest, for any losses of wages or benefits they suffered as a result of the Respondent's failure to pay them the contractually required wages or to provide them with the contractually required hospitalization or prescription benefits, including reimbursing them for any expenses they incurred because of its failure to provide such benefits. All backpay shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682, 683 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971). Interest on all backpay shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having further found that the Respondent unlawfully refused to remit checked-off union dues to the Union, we shall order the Respondent to remit to the Union all back dues withheld from the pay of the unit employees since November 4, 1992, plus interest as computed under *New Horizons for the Retarded*, *supra*.

ORDER

The National Labor Relations Board orders that the Respondent, Alert Ambulance, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Union No. 293, a/w International Brotherhood of Teamsters, AFL-CIO (the Union), by failing or refusing to comply with all the terms of the parties' 1992-1995 collective-bargaining agreement with respect to the employees in the following appropriate unit:

All full-time and part-time Ambulance Drivers and Attendants employed by the Employer directly, indirectly, or in any wholly owned or controlled subsidiary company of the Employer, who are engaged in driving or servicing the Employer's motor vehicle equipment, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) Failing or refusing to pay the unit employees the wage rates contained in the 1992-1995 agreement with the Union.

(c) Failing or refusing to provide the unit employees with the hospitalization and prescription benefits contained in the 1992-1995 agreement with the Union.

(d) Failing or refusing to remit to the Union the dues that were withheld from the pay of the unit employees pursuant to the 1992-1995 collective-bargaining agreement with the Union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to all the terms of the 1992-1995 agreement with the Union.

(b) Make whole the unit employees for any loss of wages or benefits they may have suffered from the Respondent's failure to comply with the terms of the 1992-1995 collective-bargaining agreement with the Union in the manner specified in the remedy section of the Board's decision and order.

(c) Remit to the Union, with interest, all dues that were withheld from the pay of the unit employees since November 4, 1992, pursuant to the 1992-1995 agreement with the Union.

(d) Post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."¹ Copies of the notice on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 30, 1993

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| James M. Stephens, | Chairman |
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| Dennis M. Devaney, | Member |
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| John Neil Raudabaugh, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with Teamsters Local Union No. 293, a/w International

Brotherhood of Teamsters, AFL-CIO, by failing to comply with the parties' 1992-1995 collective-bargaining agreement with respect to our employees in the following appropriate bargaining unit:

All full-time and part-time Ambulance Drivers and Attendants employed by the Employer directly, indirectly, or in any wholly owned or controlled subsidiary company of the Employer, who are engaged in driving or servicing the Employer's motor vehicle equipment, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to pay our employees the wage rates contained in our 1992-1995 agreement with the Union.

WE WILL NOT fail or refuse to provide our employees with the hospitalization and prescription benefits contained in our 1992-1995 agreement with the Union.

WE WILL NOT refuse to remit to the Union the dues that we withheld from the wages of our unit employees, pursuant to the 1992-1995 agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them under Section 7 of the Act.

WE WILL adhere to all the terms of the 1992-1995 agreement with the Union.

WE WILL make our unit employees whole, with interest, for any loss of wages or benefits they may have suffered as a result of our failure to comply with our 1992-1995 agreement with the Union.

WE WILL remit to the Union, with interest, all dues that were withheld from the wages of our unit employees since November 4, 1992, pursuant to our agreement with the Union.

ALERT AMBULANCE, INC.